



OFFICE OF THE COUNTY PROSECUTOR COUNTY OF MONMOUTH

132 JERSEYVILLE AVENUE
FREEHOLD, NJ 07728-2374

(732) 431-7160

LORI LINSKEY
FIRST ASSISTANT PROSECUTOR

MICHAEL J. WOJCIECHOWSKI
DEPUTY FIRST ASSISTANT PROSECUTOR

JOHN G. McCABE JR.
CHIEF OF DETECTIVES

CHRISTOPHER J. GRAMICCI
MONMOUTH COUNTY PROSECUTOR

July 8, 2020

Ms. Runa Sandvik
MuckRock News
DEPT MR 94378
411A Highland Ave.
Somerville, MA 02144-2516
94378-94817056@requests.muckrock.com

Dear Ms. Sandvik:

This letter with attachments responds to your Open Public Record (OPRA) request of June 4, 2020. The deadline for responding to this request has been extended twice, by emails dated June 15 and 30, 2020. The requested records were described as follows:

Any and all records detailing the arrest and detention of journalist Gustavo Martinez of Asbury Park Press on June 1, 2020 by officers of the Belmar Police Department. Records requested include police reports, arrest reports, witness statements, and/or narratives submitted by police officers involved with the reporters' arrests.

Responsive records are attached. Driver's license, social security, and phone numbers are redacted pursuant to N.J.S.A. 47:1A-5. Military status is redacted from the Arrestee Information Sheet as a "confidential personal identifier" in accordance with R. 1:38-7(a) and N.J.S.A. 47:1A-9.

Among the documents that you requested were "police reports," "witness statements" and "narratives submitted by police officers." All three types of documents are "criminal investigatory records," N.J.S.A. 47:1A-1.1, and therefore exempt from release under OPRA. See North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541, 569 (2017) (investigative reports and witness statements about criminal incident "fall within the "criminal investigatory exception"); Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 356-57, 360, 370 (App. Div. 2003) (affirming dismissal of portion of complaint regarding non-disclosure of police and EMT reports under OPRA, on the ground such documents were "criminal investigatory records"). Despite this, the Monmouth County Prosecutor's Office is providing you with the police narratives relating to this arrest. We do so in recognition of the fact that there is no pending criminal case and the Internal Affairs (IA) investigation arising from this

incident has concluded, and there is a compelling public interest in release of these records, particularly in the present social climate. Cf. North Jersey Media Group, 229 N.J. at 580 & n.10.

Apart from the police officers' narratives, no witness statements were taken incident to Mr. Martinez's arrest. Witness statements were taken subsequently, as part and in furtherance of the IA investigation. "IA investigation reports and documents are exempt from disclosure under OPRA" pursuant to § 9.6 of the Attorney General's Internal Affairs Policy & Procedures (Dec. 2019) and N.J.S.A. 47:1A-9. See Rivera v. Union County Prosecutor's Office, 2020 WL 3397794 *7 (N.J. App. Div., June 19, 2020) (unpub. opinion). The request for witness statements is denied pursuant to the "criminal investigatory records" exception to OPRA, and on the ground such statements are confidential IA records.

Although you did not specifically request photographic records, this Office is in possession of body worn camera (BWC) footage and still photographs that could be said to "detail the arrest and detention" of Mr. Martinez. In this regard, the BWC footage of the officer who arrested Mr. Martinez is being made accessible to you, in accordance with Rivera v. Township of Bloomfield, 2020 WL 109639 (N.J. App. Div., Jan. 9, 2020) (unpub. opinion).

Some still photos in our possession were derived from that BWC footage and from a video taken by Mr. Martinez that had been publicly posted on Twitter. Those photos, five in number, are being released to you. The three photos that depict various persons wearing neon yellow shirts marked "PRESS" were obtained from the Twitter feed. The two remaining photos, which have words and/or numbers on the bottoms, are stills from the arresting officer's BWC footage.

The photos that are in our possession but are not being released to you were created or obtained in furtherance of the IA investigation. Those photos are withheld because of the confidentiality afforded IA records, as set forth above. Internal Affairs Policy & Procedures, supra, § 9.6; Rivera, 2020 WL 3397794 at *6-8.

Respectfully submitted,

CHRISTOPHER J. GRAMICCIONI
MONMOUTH COUNTY PROSECUTOR

/s/ *Mary R. Juliano*

By: Mary R. Juliano
Assistant Prosecutor